UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

AVROHOM POLLAK, individually and on behalf of all others similarly situated,

Plaintiff,

v.

FIRSTSOURCE ADVANTAGE, LLC,

Defendant.

Case No.: 3:15-cv-6046-MAS-DEA

AMENDED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, ("FDCPA") 15 U.S.C. § 1692 *et seq.*, to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses.

2. Plaintiff, AVROHOM POLLAK ("Plaintiff") brings this class action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the deceptive, unfair, and unlawful actions of FIRSTSOURCE ADVANTAGE, LLC, ("FIRSTSOURCE" or "Defendant") with regard to Defendant's unlawful debt collection practices that violate both state and federal debt collection laws.

3. Plaintiff alleges as follows upon personal knowledge as to Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorney.

4. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

5. Unless otherwise stated, Plaintiff alleges that any violations by Defendant were knowing and intentional, and that Defendant did not maintain procedures reasonably adapted to avoid any such violations.

6. Unless otherwise indicated, the use of any Defendant's name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of Defendant.

JURISDICTION AND VENUE

7. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692k, and 28 U.S.C. § 1367 for supplemental state law claims.

8. This action arises out of Defendant's violations of (i) the Fair Debt Collection Practices Act, ("FDCPA") 15 U.S.C. § 1692, *et seq*.

9. The Court has personal jurisdiction over Defendant as it conducts business within the State of New Jersey and has purposefully availed itself of the laws and markets of the State of New Jersey and this district.

10. Venue is proper in the United States District Court, District of New Jersey pursuant to 28 U.S.C. § 1391 as (i) Plaintiff resides in the County of Ocean, State of New Jersey, which is within this judicial district; and (ii) the conduct complained of herein occurred within this judicial district.

PARTIES

11. Plaintiff, AVROHOM POLLAK, ("Plaintiff") is a natural person who resides in the City of Lakewood, County of Ocean, State of New Jersey, from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from

Plaintiff, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

12. Defendant, FIRSTSOURCE ADVANTAGE, LLC, ("FIRSTSOURCE" or "Defendant") is a limited liability company organized and existing under the laws of the State of New York, with a principal place of business located in Amherst, New York.

13. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a "debt" as the term is defined by 15 U.S.C. § 1692a(5).

FACTUAL ALLEGATIONS

14. At all relevant times, Plaintiff was an individual residing within the State of New Jersey.

15. At all relevant times, Defendant conducted business in the State of New Jersey and within this district.

16. At all relevant times, Defendant acted as a third-party debt collector collecting, or attempting to collect, debts owed or alleged to be owed another.

17. At all relevant times, Defendant's principal business was the collection of "debts" as that term is defined by 15 U.S.C. § 1692a(5) and Defendant collects, or attempts to collect, such debts on behalf of multiple creditors through the ordinary course of its business.

18. At all relevant times, Defendant was ***not*** an employee or officer of American Express, Amex, American Express Corporation or American Express Company (collectively as "American Express").

19. At all relevant times, Defendant was ***not*** related by common ownership or affiliated by corporate control with American Express.

20. Sometime prior to March 18, 2015, Plaintiff is alleged to have incurred a credit card debt on an American Express credit card account (the "debt").

21. This alleged debt was incurred on a credit card account that was opened for, and used for, personal, family, and household purposes.

22. American Express and the Defendant claims the alleged debt is in default.

23. After the alleged debt had been in default for over a year, the debt was placed with Defendant, for the sole purpose of debt collection, between October 15, 2014 and the present

time.

24. On October 15, 2014, Defendant mailed a debt collection letter on its letterhead to Plaintiff. ***See,* Exhibit A**.

25. On February 17, 2015 and March 18, 2015, respectively, Defendant mailed two more Collection Letters (the "Letters") to Plaintiff. ***See,* Exhibit B**.

26. The Letters display the distinctive square shaped American Express logo and even displays an encircled "R" to denote the use of a registered trademark.

27. The American Express logo appears on the top letterhead and also again on the bottom portion of the Letters in a payment "stub" which is meant to be detached and mailed with payment. Within each logo the text "AMERICAN EXPRESS" appears in prominent bold lettering.

28. The Letter states it is in reference to an "American Express account" which is "past due" and offers to settle the alleged debt.

29. The Letter is also signed "Sincerely, American Express Global Collections."

30. The numerous and explicit references to "American Express" are meant to instill in the recipient that the letter was actually created and sent by the alleged original creditor, American Express. In reality, the Letter was sent by Defendant, a third-party debt collector, who sent the Letter as American Express in an effort to evade compliance with state and federal debt collection laws.

31. The Collection Letters each offered the Plaintiff to resolve his account for sixty percent (60%) of his balance.

32. The Collection Letters stated that "In order to accept this offer, please call American Express at 1-877-443-0144."

33. When calling the phone number 1-877-443-0144, the Plaintiff and any other caller are greeted by an individual identifying themselves as a representative of American Express.

34. Upon information and belief, the Collection Letters were in fact mailed by Defendant.

35. Upon information and belief, individuals, debtors, and consumers calling the phone number of 1-877-443-0144 are in fact speaking to representatives and employees of the Defendant,

and have no employment or other affiliation with American Express.

36. When Plaintiff's counsel called American Express directly, American Express advised that the phone number of 1-877-443-0144 actually belonged to Defendant.

37. Defendant intentionally masquerades as American Express and uses its logo on its Collection Letters to deceive Plaintiff, and similarly situated consumers, into believing: (i) that the Letters were prepared and sent by American Express; (ii) that American Express can be reached at the addresses on the Letters; (iii) that any payment sent to those addresses would be received by American Express; (iii) that any call to 1-877-443-0144 would connect the caller with a representative of American Express and (v) that American Express was attempting to collect the debt referenced therein rather than a third-party debt collector.

38. Through this conduct, Defendant violated 15 U.S.C. § 1692e by making false, deceptive, and misleading representations in connection with the collection of a debt; 15 U.S.C. § 1692e(9) by the use and distribution of any written communication which creates a false impression as to its source, authorization, or approval; 15 U.S.C. § 1692e(10) though the use of a false representation or deceptive means to collect or attempt to collect a debt or to obtain information from a consumer; 15 U.S.C. § 1692e(14) by the use of any business, company, or organization name other than the true name of the debt collector's business or company.

39. The Collection Letters were also "communications" as that term is defined by 15 U.S.C. § 1692e(11). The Letters fail to disclose that Defendant is a debt collector, that the Letter is an attempt to collect a debt by a debt collector or that any information obtained will be used for the purpose of debt collection.

40. Through this conduct, Defendant violated 15 U.S.C. § 1692e(11) by failing to disclose that the communication was an attempt to collect a debt by a debt collector and that any information obtained would be used for that purpose.

41. Defendant's violations of the FDCPA caused actual harm to the Plaintiff, in subjecting the Plaintiff to improper and deceptive collection activity in violation of the Plaintiff's statutorily created rights to be free from such illegal debt collection tactics, by depriving the

Plaintiff of information to which he has a legal right to, creating the risk that the Plaintiff may pay a debt he may not have otherwise chosen to pay, and by causing the Plaintiff to be subject to false, deceptive, abusive, unfair, and unconscionable means to collect a debt.

CLASS ALLEGATIONS

42. Plaintiff brings this class action on behalf of himself, and on behalf of all others similarly situated.

43. Plaintiff defines the "Class" as:

> (i) all persons with addresses within the State of New Jersey; (ii) who were sent a written communication by Defendant; (iii) which was the same or similar to Exhibit B of this Complaint; (iv) to recover a consumer debt; (v) which was not returned undelivered by the United States Postal Service; (vi) within one year prior to the filing of the Complaint in this action.

44. Plaintiff defines "Subclass 1" as:

> (i) all persons with addresses within the State of New Jersey; (ii) who were sent a written communication by Defendant; (iii) which did not contain the notices required by 15 U.S.C. § 1692e(11); (iv) to recover a consumer debt; (v) which was not returned undelivered by the United States Postal Service; (vi) within one year prior to the filing of the Complaint in this action.

45. Defendant and its employees and agents are excluded from the Class and Subclasses.

46. Plaintiff's attorney(s), their employees and agents, and any judge, judicial officer, or Court employee assigned to this action are excluded from the Class and Subclasses.

47. Plaintiff does not know the exact number of persons in the Class, but believes them to be in the tens of thousands, making joinder of all these actions impracticable.

48. The identities of individual members are ascertainable through Defendant's and/or Defendant's agents' records or by public notice.

49. There is a well-defined community of interest in the questions of law and fact affecting the members of the Class. The questions of law and fact are common to the Class and predominate over questions affecting only individual class members, including but are not limited to, the following:

a) Whether Defendant violated the FDCPA as described herein;

b) Whether members of the Class are entitled to remedies under the FDCPA;

c) Whether members of the Class are entitled to declaratory relief;

d) Whether members of the Class are entitled to injunctive relief;

e) Whether members of the Class are entitled to an award of reasonable attorney's fees and costs of suit pursuant to the FDPCA;

f) Whether Defendant may satisfy Defendant's affirmative defense of bona fide error with regard to Defendant's violations of the FDCPA; and,

50. Plaintiff will fairly and adequately protect the interests of the Class.

51. Plaintiff has retained counsel experienced in consumer class action litigation and in handling claims involving unlawful debt collection practices.

52. Plaintiff's claims are typical of the claims of the Class, which all arise from the same operative facts involving unlawful collection practices.

53. A class action is a superior method for the fair and efficient adjudication of this controversy.

54. Class-wide damages are essential to induce Defendant to comply with the federal and state laws alleged in the Complaint.

55. The interests of class members in individually controlling the prosecution of separate claims against Defendant are minimal because the maximum statutory damages in an individual action under the FDCPA is $1,000. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims, e.g., securities fraud.

56. Defendant has acted on grounds generally applicable to the class, thereby making appropriate final declaratory relief with respect to the class as a whole.

57. Plaintiff contemplates providing notice to the putative class members by direct mail in the form of a postcard-type notice and via an Internet website.

58. Plaintiff requests certification of a hybrid class for monetary damages and injunctive relief.

FIRST CAUSE OF ACTION FOR VIOLATIONS OF

THE FAIR DEBT COLLECTION PRACTICES ACT

(“FDCPA”) 15 U.S.C. § 1692 *ET SEQ.*

59. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

60. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 *et seq*.

61. As a result of each and every violation of the FDCPA, Plaintiff and Class Members are entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in the amount of up to $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2); and reasonable attorney’s fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each named Defendant individually.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

- That this action be certified as a class action on behalf of the Class and Plaintiff be appointed as the representative of the Class;
- An award of actual damages, in an amount to be determined at trial, pursuant to 15 U.S.C. § 1692k(a)(1), for each plaintiff and putative class member;
- An award of statutory damages of $1,000.00, pursuant to 15 U.S.C. § 1692k(a)(2)(A), for each plaintiff and putative class member against each named Defendant individually;
- An award of costs of litigation and reasonable attorney’s fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- That the Court preliminarily and permanently enjoin Defendant from engaging in the unlawful collection practices stated herein.
- Any and all other relief that this Court deems just and proper.

Dated: August 22, 2016

Respectfully submitted,

MARCUS ZELMAN, LLC

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TRIAL BY JURY

62. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: August 22, 2016

/s/ Yitzchak Zelman_______________
Yitzchak Zelman, Esq. (YZ5857)